IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.946 OF 1987

The Municipal Corporation of Greater Bombay.).. Appellant

Versus

1) Shri Babu Bharose Dhobi)
2) Smt.Ramdevi Babu Dhobi)
3) Smt.Parmeshwari Shivpalak Dhobi).. Respondents

Mr.K.K.Tated with Ms.G.S.Roy-Choudhary i/b.M/s.Mulla & Mulla & Craigie Blunt & Caroe for the Appellant.

Mr.G.K.Masand for Respondent Nos.1 and 2.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 16TH DECEMBER 2004

ORAL JUDGMENT :

. This First Appeal arises from the judgment and order of the Motor Accidents Claims Tribunal, in M.A.C.T. Application No.1968 of 1985. The Tribunal has awarded compensation of Rs.60,000/- to the Respondents herein together with interest at the rate of 12% per annum from the date of the application i.e. 8th October 1985 till realisation.

2. The Claimants i.e. Respondent Nos.1 and 2 are the parents of the deceased. Respondent No.3, who is the widow of the deceased, was arrayed as a Respondent

to the application since she was not available when the application was filed. The Respondents have claimed that on 9th April 1985 the deceased one Shivpalak Babu Dhobi was proceeding on a bicycle around 9.00 a.m. near Mahim bridge restaurant at Mahim Causeway. A BEST bus bearing route No.81 fatally knocked him down on that day. On 8th October 1985, the claim application was filed claiming Rupees One lakh as compensation together with interest thereon. The Respondents claimed that the BEST bus bearing route No.81 was driven in rash and negligent manner causing death of their son pursuant to an accident. They also claimed that the deceased was earning around Rs.500/- per month.

3. The Written Statement filed by the Appellants denied the involvement of any of the buses in the accident. The Appellants having denied the accident, also denied the liability to pay any compensation. Evidence of one Naresh Pruthviraj Sharma who had witnessed the accident was led on behalf of the Respondents and Respondent No.1 was also examined. The Appellants examined about 11 witnesses, 10 of whom were drivers who claimed to have driven their buses along the Mahim Causeway on that day during the relevant time. The other witness who was examined by the Appellant was the Supervisor, Traffic Control Branch. The Tribunal after considering all the evidence on record has held

that the Corporation is liable to pay Rs.60,000/- as compensation to the Respondents together with interest at the rate of 12% per annum from the date of the application. The Tribunal accepted the evidence of the independent witness Naresh Sharma who was present on the scene of the accident as he was seated in his stationary delivery truck. The Tribunal found that this witness who had lodged the FIR with the Police, had no reason to involve a BEST bus in the accident. The Tribunal was impressed by the fact that Naresh Sharma was an independent and impartial witness. The Tribunal also considered the fact that although Sharma had not actually seen the bus hitting the cyclist, he had in fact seen the rear wheel of the bus run over the cyclist. The Tribunal found that Sharma had enough time to see the bus fatally injuring the deceased since the cyclist had fallen near the footboard of the delivery truck in which Sharma was seated. The Tribunal did not accept the evidence of the Corporation as many of the bus drivers had not seen either the accident or the crowd gathered at the accident spot. The two bus drivers who had seen the crowd gathered near the accident spot, had also noticed the delivery truck stationary at that spot. All these circumstances led the Tribunal to accept the version of the Respondents that an accident had occurred and that the deceased was fatally injured on account of the rash and negligent

driving of the BEST bus. The Tribunal then considered the compensation to be awarded and has found that since the deceased was earning about Rs.500/- to Rs.600/- per month, he must have remitted atleast Rs.200/- to Rs.300/- to his parents at his native place. The dependency was taken as Rs.250/- per month. The deceased was 25 years of age and therefore the multiplier of 15 was adopted. The Tribunal, therefore, held that by considering the dependency and the multiplier and the age of the deceased, the amount would work out to Rs.45,000/-. A further amount of Rs.10,000/- for loss of consortium and Rs.5,000/- on account of loss of expectancy of life was also awarded. Thus, on the total amount of Rs.60,000/- awarded by the Tribunal, it was further directed that interest at the rate of 12% per annum should be paid to the Respondents.

4. Aggrieved by this judgment and order, the Appellants have approached this Court by way of the present First Appeal. Mr.Tated for the Appellants submits that the involvement of a BEST bus in the accident cannot be believed and therefore the Tribunal was wholly in error in awarding compensation against the Appellants. He submits that there is no direct evidence on record to indicate that there was a fatal injury caused by the BEST bus to the deceased and, therefore, there is no reason why the Tribunal should have granted

the compensation. He further submits that the several witnesses who had been examined by the Corporation establish the fact that no BEST bus was involved in the accident which had occurred. He further urges that the contradictions present in the evidence of the so-called independent witness ought to have been sufficient for the Tribunal to discard his evidence. The learned Advocate further submits that if indeed Sharma had witnessed the accident, as claimed by him, he would have certainly noted the number of the bus. Since there is no indication as to what was the bus number, the learned Advocate submits that BEST bus was not involved at all in the accident. He also urges that the interest awarded at the rate of 12% on the compensation payable is too high and places reliance on the judgment of the Supreme Court in the case of *Tamil Nadu State Transport Corporation, Tanjore* vs. *Nataranaj and others*, **(2003) 6 SCC 137**, to submit that the interest could be only at the rate of 9% per annum.

5. Having given my anxious consideration to the facts involved in the present case, I am inclined to accept the view taken by the Tribunal. The Tribunal has accepted the evidence of the independent witness Sharma for arriving at the conclusion that a BEST bust was involved in the accident. Sharma, who was the driver of an aerated drinks delivery truck has no axe to grind

with the Corporation and, therefore, it is impossible that he would unnecessarily involve a BEST bus in the accident which he had witnessed. This witness has also lodged the FIR. He was present when the panchanama was drawn up. He has further attended the Court to depose in the matter. All these factors indicate that Sharma had acted selflessly and as a public spirited person. No motives have been attributed to Sharma by the Appellants. He has deposed that he was seated in his delivery truck on the Mahim Causeway as he was delivering aerated drinks to the restaurant on the Causeway. He has also averred that he heard a thud and saw the deceased lying near the footboard of his truck through the right view mirror. He also saw a BEST bus run over the deceased. He has further testified that the BEST bus was approaching at a fast speed and after running over the deceased sped away. Sharma informed a Constable who was present nearby about the accident and then was taken to the police station to record the FIR. He has further stated on oath that he returned to the accident site and was present while the panchanama was being conducted. This deposition of Sharma has not been shaken in the cross-examination. The Tribunal has, therefore, naturally accepted the evidence of Sharma.

6. Witness No.9 examined on behalf of the Appellants has deposed that as he was driving along the

Mahim Causeway, he noticed a stationary lorry containing aerated drinks. He also noticed that several persons had gathered near the lorry. Witness No.11 has corroborated this evidence. He admitted that an accident had already occurred near the pedestrian signal when he approached the Causeway. This witness has further deposed that a lorry carrying cold drinks was stationary at the spot and that there was a cyclist lying in front of the lorry and a crowd had gathered around. This driver was on the route No.81 Ltd. The witness No.7, who was the Supervisor, has stated that nobody reported an accident and, therefore, there is no mention about an accident in the log book.

7. The submission of Mr.Tated that since there is no entry in the log book of an accident having occurred, it obviously meant that no BEST bus was involved in an accident at the relevant time is unsustainable. The fact that the driver of the BEST bus involved in the accident sped away has to be borne in mind and in the light of this fact, it is obvious that the driver did not care to intimate the office that he had committed an accident. Moreover, the witnesses examined by the Appellants do not carry its case any further. Only one driver from route No.81 was examined. The witnesses of the Respondents were categorical in their deposition that bus No.81 was involved in the accident. The

Appellants, therefore, ought to have examined the drivers on this route rather than the drivers on some other routes.

8. I am unable to accept the submissions made by Mr.Tated and, therefore, the Award of the Tribunal need not be interfered with. The award of 12% interest on the compensation is justified. The judgment of the Apex Court in the case of *Tamil Nadu State Transport Corporation* (supra) does not support the submission made by the learned Advocate for the Appellants. In that case, the Motor Accidents Claims Tribunal had determined the compensation and had granted interest at the rate of 9% from the date of the filing of the claim petition. The Apex Court had only confirmed this amount. I see no reason to alter the interest awarded.

9. In these circumstances, First Appeal dismissed. No order as to costs.

10. The amount of Rs.81,635/- deposited by the Appellants on 14th December 1987 shall be paid over to the Respondents with interest, if any, accrued thereon.

11. Certified copy expedited.